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U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: MAR 19 2007

IN RE:

Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Physiology from Hebei Medical University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep’t. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, neurophysiology, and that the proposed benefits of his work, improved understanding how estrogen impacts cardiac regulation (relevant to hypertension) in the brain and the effect of gravity on cardiovascular function, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The director concluded that the reference letters submitted were unsupported by other evidence of the petitioner’s influence in the field, such as evidence that the petitioner has been widely and frequently cited. On appeal, counsel asserts that the petitioner submitted five letters from independent researchers who explain the significance of the petitioner’s research, that the petitioner’s

publications are too recent to have been frequently cited and that the director did not give sufficient weight to the petitioner's grant from the American Heart Association (AHA). Counsel further asserts that the petitioner's track record also includes publications of his research while in China. The petitioner submits information about the Chinese journals that published the petitioner's work, a new letter from the petitioner's supervisor, the grants supporting the petitioner's research, evidence that the petitioner has reviewed manuscripts for two journals and evidence that the petitioner's articles have been minimally cited. We will consider this evidence below.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner received his Doctor of Medicine degree from Hebei Medical University in 1989. In 1997, he received his Master of Science degree and in 2000 he received his Ph.D. from the same institution. Both of the latter degrees were in the field of Physiology. In 2000, the petitioner began a postdoctoral fellowship at the University of Missouri-Columbia under the direction of [REDACTED]. After the date of filing, it appears that the petitioner followed [REDACTED] to the University of Iowa, accepting a position as an assistant research scientist at that institution.

[REDACTED] Chairman of the Department of Physiology at Hebei Medical University, asserts that the petitioner's thesis was the first study "to demonstrate that Capsaicin activates the catecholaminergic neurons of brainstem nuclei involved in cardiovascular regulation, thereby inducing increases in blood pressure and heart rate, which provided the electrophysiological and morphological basis for interaction between the afferent (sensory) and efferent (motor) nerve system." [REDACTED] notes that this work was published. On appeal, the petitioner submitted evidence that the Chinese journals publishing the petitioner's work are prestigious. We will not, however, presume the influence of a given article from the journal in which it appeared. Rather, the petitioner must demonstrate the significance of the individual article. [REDACTED] does not explain how this work has influenced the field and the petitioner's articles in Chinese journals, published in

2000 and 2001, have been cited no more than twice each. Moreover, one of the citations of the article cited twice is a self-citation by a coauthor.

██████████ former Director of the National Center for Gender Physiology at the University of Missouri and currently the Vice President for Research at the University of Iowa, discusses the importance of investigating the link between sex hormones and high blood pressure. Upon arriving at the University of Missouri, the petitioner “designed and built a sophisticated system for recording extracellular action potential discharge in the region of the nucleus tractus solitarius (NTS.)” Through his subsequent experiments, the petitioner demonstrated that estrogen inhibits spontaneous and excitatory amino acid induced NTS neuronal activity through estrogen activation of estrogen receptors.” The petitioner also developed a mouse model through which he confirmed that “similar to other species, in mice the ability of Angiotensin II to acutely reset baroreflex control of heart rate is dependent on an intact area postrema.”

Further, the petitioner used his surgical skills to timely and accurately implant transmitters and lateral ventricular cannula used for telemetric recording of blood pressure and chronic infusion of drugs in conscious mice. The results from this research demonstrated that estrogen and androgen “may modulate cardiovascular function through their actions on [the] central nervous system.” In a subsequent letter, ██████████ characterizes this work, published after the petition was filed, as “particularly noteworthy.” The petitioner must demonstrate his eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner cannot demonstrate that this work had already influenced the field as of the date of filing when it had yet to be disseminated widely in the field through publication. Similarly, we cannot consider the petitioner’s post-filing promotion and new role as Dr. Hay’s senior laboratory manager overseeing the postdoctoral fellows and technicians.

While the petitioner’s results may have served as a basis for the progress report justifying continued funds from a previously awarded grant, all funded researchers must justify their continued receipt of grant money. More generally, it can be argued that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

Another collaborator at the University of Iowa, ██████████, asserts that the petitioner’s research has “already impacted the direction of research in this area of studying hypertension as related to gender.” ██████████ however, provides no examples of independent laboratories that have been influenced by the petitioner or how they have applied his results.

Finally, both ██████████ and ██████████ another collaborator at the University of Missouri-Columbia, discuss the petitioner’s investigation of gravity and blood pressure. The petitioner used mice with dysfunctional gravity receptors to demonstrate that the slopes of baroreflex were significantly blunted in these mice when compared to wild type mice. According to ██████████ these

results “suggest that gravity receptors play an important role of baroreflex regulation, which maintains the stable blood pressure.” This work, funded by the National Aeronautics and Space Administration (NASA) has implications for space flight. In a subsequent letter, [REDACTED] asserts that this work “has opened the door to develop countermeasures that can prevent or minimize orthostatic intolerance after spaceflight and has made him a leading expert in this field.” [REDACTED] provides no examples and the petitioner did not submit any letters from high level officials at NASA confirming their pursuit of technology based on the petitioner’s work.

[REDACTED], an associate professor at the University of Texas Health Science Center and a listed co-investigator on [REDACTED]’s 1998 grant application to study estrogen and hypertension, discusses the petitioner’s unique combination of skills. Specifically, the petitioner is capable of applying “a number of diverse approaches to investigate the complicated regulation of sex hormones on cardiovascular activity, including physiology, pharmacology, and molecular biology.” Simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

[REDACTED], Director of Basic Research in Anesthesiology at the Pennsylvania State University, asserts that he has “known [the petitioner] and his research for several years.” [REDACTED] does not explain how he came to know the petitioner. [REDACTED] reviews the petitioner’s research, discussed above, and concludes that the petitioner’s research “not only is significant in basic science, but also is critical to therapeutic interventions of hypertension and orthostatic intolerance (hypotension) of older individuals or astronauts after spaceflights.” [REDACTED] speculates that the petitioner’s research “will ultimately lead to the development of new therapies for the treatment of hypertension and orthostatic hypotension.” The record does not contain any letters or other evidence from pharmaceutical companies supporting [REDACTED]’s assessment. The petitioner also failed to submit any media coverage, including local coverage, of his work and its implications.

[REDACTED] a professor at the University of Nebraska Medical Center, provides a letter of support in response to the director’s request for additional evidence but does not explain how he learned of the petitioner and his work. [REDACTED] states:

I consider the impact of [the petitioner’s] research very significant and of critical importance to our field as his discoveries have finally shed light on developing clinical therapies for hypertension. I also consider his research to be among the best to elucidate orthostatic intolerance (hypotension) of older individuals or astronauts after spaceflights. I can comment that incorporation and development of these research advances by [sic] may well take five to ten years before we see full-scale adoption, and that his ongoing research is critical to the success of such implementation. As [the petitioner] will continue to play a key role in important NIH research projects ([REDACTED] 2/1/05-1/31/09), we certainly cannot afford to lose his continued contributions to this area of research in the United States. Finally, [the petitioner’s] research is of a novel nature. The data from his experiments

are unique and of importance to our cardiovascular research field. His original efforts in the understanding of mechanisms underlying the development of hypertension cannot be replaced.

[REDACTED] concludes that the petitioner's discoveries are "among the most important" with an impact that "has been, and will be, significant." It is presumed that all published research is unique and original. While we do not question [REDACTED] sincerity in opining that the petitioner's work will, in several years, prove influential, the petitioner must demonstrate some degree of influence as of the date of filing.

[REDACTED], Chairman of Neuroscience at the University of Pittsburgh, asserts that the "impact of [the petitioner's] ongoing research is evidenced by his discoveries themselves (with which I am familiar), as well as the quality of his publications and presentation of his work." Once again, we are not persuaded that the mere fact that the petitioner has published and presented his work sets him apart from other researchers with the same minimum qualifications. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its *Report and Recommendations*, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition are the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career."

[REDACTED] Chair of the Department of Physiology at the University of Oklahoma Health Sciences Center, discusses the importance of the petitioner's area of research, which is not in dispute. He references a recent article in *Science* on the controversy of hormone replacement therapy for women. The petitioner does not provide the article and [REDACTED] does not imply that the article cites the petitioner's work as a significant contribution to this debate.

The petitioner also submitted a letter from [REDACTED] Director of the Center for the Study of Sex Differences (CSD) at Georgetown University. According to [REDACTED] Curriculum Vitae, she and [REDACTED] coauthored an abstract on testosterone in 2005. [REDACTED] asserts that she is familiar with the petitioner's work through his publications and that his work has impacted her own investigation of the influence of gonadal steroids on the gender differences in high blood pressure and kidney disease. [REDACTED] does not explain how the petitioner impacted her own work. For example, she does not state that she utilized his monitoring techniques or that his results opened up new avenues for exploration or identify some other influence. In fact, she fails to identify which of the petitioner's projects was influential. [REDACTED] wrote her letter June 20, 2005, over a year after the petition was filed. If [REDACTED] was influenced by a publication published after the date of filing, such information would not relate to the petitioner's eligibility as of the date of filing.

We do not question the sincerity or credentials of the above authors. While Citizenship and Immigration Services (CIS), may, in its discretion, use as advisory opinions statements submitted as expert testimony, it remains that CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the objective evidence of record must support the necessarily subjective opinions discussed above.

Several references attest to the significance of the petitioner's receipt of a postdoctoral fellowship grant from the AHA, the invitations extended to the petitioner to review manuscripts for scientific journals and his membership in the American Physiological Society.

The petitioner was elected as a regular member of the American Physiological Society in April 2003. The record does not contain the official bylaws of the society. Thus, the petitioner has not established the membership criteria for the society. Professional memberships open to members of the field with a specific level of education and/or experience are not evidence of the member's influence on the field. Moreover, membership in a professional association is one of the regulatory criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. We cannot conclude that meeting one criterion, or even the requisite three criteria for that classification warrants a waiver of that process in the national interest.

The Heartland Affiliate Research Committee of the AHA approved a postdoctoral fellowship for the period July 1, 2003 through June 30, 2004 to support the petitioner's investigation of Angiotensin II dependent hypertension and the effects of gender. The petitioner's references assert that the AHA only funds 20 percent of the proposals submitted. While the review of the petitioner's proposal praises his past experience it refers to him as a "trainee." The review looks favorably on the ability of the "sponsor" to provide an "optimal training experience" and the quality of the proposal. Nothing in these materials suggests that the approval of this grant is indicative of the petitioner's past influence in the field or guarantees that the results will be notably influential.

As of the date of filing, the petitioner had been requested to review a manuscript for *Brain Research*. The record contains no evidence from this journal regarding their selection process or the number of reviewers they utilize. We cannot ignore that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field and is not necessarily indicative of the reviewer's influence in the field.

As acknowledged by the director, the petitioner received an "Iowa Physiological Society Trainee Award" from the American Physiological Society on May 17, 2004, four days after the petitioner

filed the instant petition. The award does not relate to the petitioner's eligibility as of the date of filing. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Regardless, recognition as a "trainee" is not indicative of an influence in the field.

Finally, as of the date of filing, the petitioner had authored 11 articles, two of which relate to the U.S. research discussed by the petitioner's references. The petitioner had also authored six published abstracts. As of the date of filing, one of the petitioner's Chinese articles had been cited once by an independent research team. As of the petitioner's response to the director's request for additional evidence, the petitioner's articles in *Brain Research* and the *American Journal of Physiology-Heart and Circulatory Physiology* had also been cited by one independent research team each. As of the date of appeal, the number of independent citations of the petitioner's articles in *Brain Research* and the *American Journal of Physiology-Heart and Circulatory Physiology* rose to two each. While counsel asserts on appeal that the articles are too recent to be widely cited, we note that one of the articles citing the petitioner's work, by [REDACTED] and [REDACTED] has already been cited nine times.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any postdoctoral research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.